

In computing Retailers' Occupation Tax liability, no deductions shall be taken by a taxpayer from gross receipts on account of the cost of the property sold, or any other cost of doing business. See 86 Ill. Adm. Code 130.410. (This is a GIL).

December 22, 2000

Dear Xxxxx:

This letter is in response to your letter dated September 11, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I require a letter ruling to the following inquiry.

FACTS

A client sells tangible personal property (computers) that is used to transmit information regarding inventory counts. The client must purchase a FCC license for each computer. The ultimate consumer is billed for the computer, license, installation, etc. There is no markup charge for the FCC license and it is separately stated on the final consumer's invoice. The charge for the FCC license is a pass-through expense. The client purchases the FCC license on behalf of the ultimate consumer who must have the FCC license in order to use software on the computer. The FCC license is in the name of the ultimate consumer.

QUESTIONS

Is the separately stated charge for the FCC license subject to (a) sales tax, (b) gross receipts tax, (c) or privilege tax?

If you need any further information regarding the hypothetical presented, please contact #####. Thank you for your response to this inquiry.

Section 3 of the Illinois Use Tax Act, 35 ILCS 105/3, imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. Section 2 of the Illinois Retailers' Occupation Tax Act, 35 ILCS 120/2, imposes a tax upon persons engaged in the business of selling at retail tangible personal property. The Retailers' Occupation Tax is an occupation tax imposed upon retailers for the privilege of engaging in the occupation of retailing. Retailers incur Retailers' Occupation Tax liability upon their gross receipts from the sale of tangible personal property.

Section 1 of the Retailers' Occupation Tax Act (35 ILCS 120/1) defines "gross receipts" from sales of tangible personal property at retail to mean the total selling price or the amount of such sales. The "selling price" or "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, and shall be determined without any deduction on account of the cost of the property sold or any other expense whatsoever. See 86 Ill. Adm. Code 130.410. The FCC license your client is selling is part of the expense of the computer because the customer cannot purchase and use the computer and its software without it. Accordingly, it is part of the selling price and is subject to tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
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